

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

IN RE: HARRY EDWARD DEAKINS
ET AL.

CIVIL ACTION NO. 1:06-00701

MEMORANDUM OPINION AND ORDER

On July 11, 2007, this court ordered appellants to file a brief within seven (7) days to show cause why this appeal should not be dismissed for failure to prosecute. (Doc. No. 4.) Appellants have failed to file a brief within that time period. In fact, appellants have not appeared in this action since their bankruptcy appeal was docketed on September 8, 2006. (Doc. No. 1.)

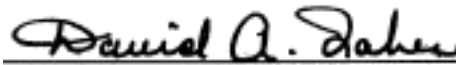
The Fourth Circuit requires that before dismissing a case pursuant to Rule 8001(a) of the Federal Rules of Bankruptcy Procedure, district courts must "(1) make a finding of bad faith or negligence; (2) give the appellant notice and an opportunity to explain the delay; (3) consider whether the delay had any possible prejudicial effect on the other parties; or (4) indicate that it considered the impact of the sanction and available alternatives." In re Serra Builders, Inc., 970 F.2d 1309, 1311 (4th Cir. 1992). However, that case contemplates that the appellant has actually made a filing or has at least shown interest in pursuing the appeal. The court cannot give meaningful consideration to these factors, given that appellants

have made no appearance in this case, even after the court gave them notice and an opportunity to explain their failure to appear. For this reason, their bankruptcy appeal must be **DISMISSED** for failure to prosecute.

The Clerk is **DIRECTED** to remove this matter from the court's active docket and to send certified copies of this Memorandum Opinion and Order to counsel of record and the appellants, pro se.

It is **SO ORDERED** this 25th day of July, 2007.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge